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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130903776-4274-02]

RIN 0648-BD66

Fisheries of the Exclusive Economic Zone Off Alaska; Modifications to Identification Markings on Fishing Gear Marker Buoys

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes a regulatory amendment to revise the identification marking requirements for fishing gear marker buoys (buoys) used in Federal waters off Alaska. This final rule eliminates the requirement that hook-and-line, longline pot, and pot-and-line buoys be marked with the vessel's name. The requirement to mark buoys with either the vessel's Federal fisheries permit number or Alaska Department of Fish and Game number remains in effect. This action is needed to remove a regulatory requirement that is unnecessary. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP), the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA Groundfish FMP), and other applicable laws.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, Sustainable Fisheries Division, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS Alaska Region manages the U.S. groundfish fisheries in the Exclusive Economic Zone off Alaska under the BSAI and GOA Groundfish FMPs. These FMPs were prepared by the North Pacific Fishery Management Council, under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and other applicable laws, and approved by the Secretary of Commerce. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This final rule implements a regulatory amendment to remove the requirement that hook-and-line, longline pot, and pot-and-line buoys be marked with the vessel's name. Under this final rule, these vessels are relieved from unnecessary compliance costs. NMFS published a proposed

rule for this regulatory amendment in the Federal Register on January 3, 2014 (79 FR 381). The 30-day comment period on the proposed rule ended on February 3, 2014. NMFS received one comment letter during the comment period on the proposed rule that supported the proposed action. A summary of this comment and NMFS' response is provided in the "Comments and Responses" section of this preamble. There were no changes to the regulatory text between the proposed rule and this final rule.

Background

Federal regulations pertaining to gear markings for groundfish are set forth at § 679.24. These regulations apply to operators of vessels required to carry a Federal fisheries permit (FFP) while fishing in the groundfish and halibut fisheries in Federal waters off Alaska. Buoys are used to indicate the positions of hook-and-line, pot, and pot-and-line gear in these fisheries. Federal regulations at § 679.24(a) require that buoys carried on board or used by any vessel subject to 50 CFR part 679 that is using hook-and-line, longline pot, or pot-and-line gear must be marked with the vessel's name and either the vessel's FFP number or the vessel's Alaska Department of Fish and Game (ADF&G) vessel registration number. In addition, the markings "shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible."

These regulations apply to "vessels regulated under this part," which refers to those vessels required to carry FFPs under § 679.4(b). FFPs are required for vessels fishing for groundfish (a legal category that does not include halibut) in the GOA or BSAI, or fishing for any non-groundfish species when incidentally caught groundfish must be retained. Regulations at § 679.7(f)(8) prohibit vessels with individual fishing quota (IFQ) halibut or sablefish on board from discarding rockfish or Pacific cod under various conditions. Thus, vessels used to fish for

halibut IFQ are required to have FFPs and comply with all regulations in 50 CFR part 679 that apply to vessels required to have FFPs, including requirements for marking buoys. Other non-groundfish fisheries have no comparable discard prohibitions.

Identification markings on buoys in the Federal waters off Alaska also are regulated by the State of Alaska (State) and the International Pacific Halibut Commission (IPHC). The State shares management responsibilities with NMFS for king crab and Tanner crab in the Federal waters off Alaska, and regulates the buoy identification markings in these fisheries. The State requires at least one buoy on each commercial king or Tanner crab pot or ring net to be legibly marked with the permanent ADF&G license number of the vessel using the gear (5 AAC 34.051; 5 AAC 35.051). Identification marking requirements for halibut gear buoys are set by the IPHC. The IPHC's regulations for 2014 require that all setline or skate buoys carried on board or used by any U.S. vessel for commercial halibut fishing shall be marked with the vessel's state license number or the vessel's registration number. Both State and IPHC commercial identification markings must be maintained in a legible condition, in characters at least four inches high (10.2 cm) and one-half-inch (1.3 cm) wide, in a contrasting color, and visible above the water. The principal difference between the State and IPHC commercial regulations and 50 CFR part 679 is the requirement for buoys to be marked with the vessel name.

Information on the extent of compliance with the existing regulations is not available; however, non-compliance has not been raised as a concern by enforcement agencies.

This final rule eliminates the requirement that buoys carried on board or marking the location of hook-and-line, longline pot, and pot-and-line gear deployed by vessels with FFPs be marked with the vessel's name. This action is needed to remove a regulatory requirement that experience has shown is not necessary. While one vessel may share the same name as another

vessel, vessel identification numbers are exclusive and unique to the recipient vessel. Therefore, this rule eliminates the requirement in § 679.24(a) to mark buoys with the vessel's name, but maintains the requirement for marking buoys with either the vessel's FFP number or ADF&G number. This action should reduce costs to vessel owners by reducing the labor and materials needed to mark buoys. In addition, this action makes buoy marking regulations at § 679.24(a) consistent with State crab and IPHC regulations.

Comments and Responses

NMFS received one comment letter during the public comment period for the proposed rule to implement this regulatory amendment. This letter was received from a representative of the affected fishing industry. A summary of the comment and NMFS' response follows.

Comment 1: The commenter expressed general support for the proposed regulatory amendment.

Response: NMFS acknowledges this comment.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the BSAI and GOA Groundfish FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law.

Executive Order 12866

This final rule has been determined not to be significant for the purposes of Executive Order 12866.

Regulatory Impact Review

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the

economic impacts this action may be expected to have. The RIR finds that this action has a positive net economic impact to commercial fishing operations since it reduces the cost of compliance with identification marking requirements for buoys. This action does not create additional administrative costs and does not impose new requirements on fishing operations, or modify other existing ones. A copy of the RIR is available from NMFS (see ADDRESSES).

Final Regulatory Flexibility Analysis

This section constitutes the Final Regulatory Flexibility Analysis (FRFA) for this action, prepared pursuant to the requirements of the Regulatory Flexibility Act (RFA). This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) prepared for the proposed rule and addresses the applicable requirements of section 604(a) of the RFA.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The description of this rule, the need for it, and its objectives are described in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule on January 4, 2014 (79 FR 381), with comments invited through February 3, 2014. An IRFA was prepared and summarized in the “Classification” section of the preamble to the proposed rule. NMFS received no comments on the IRFA; therefore, no changes were made to the rule as a result of comments on the IRFA.

Number and Description of Small Entities Regulated by the Final Rule

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment is considered the universe for purposes of this analysis. In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Vessels directly regulated by this action are those required to carry an FFP, and that use hook-and-line, pot, or pot-and-line gear in Federal groundfish or halibut fisheries in the GOA or

BSAI. NMFS estimates that, in 2012, the most recent year for which gross revenues information is available, 761 entities would have been directly regulated by this action. NMFS estimates that of those 693 would have been small entities. The Small Business Administration (SBA) defines a small commercial finfish fishing entity as one that has annual gross sales of less than \$19 million; a shellfish fishing small entity is one with less than \$5 million annual gross revenue, and other marine fishing operations are small if they have less than \$7 million in gross revenue. 78 FR 37398 (July 22, 2013). Median gross revenues for the small entities would have been about \$327,000, while 75 percent would have had gross revenues under about \$779,000, and 25 percent would have had gross revenues under about \$144,000. The 99th percentile of gross revenues was about \$2,974,000. Accordingly, under any of the SBA's size standards for fishing operations, all affected entities are "small." This action will reduce, in a small way, the reporting and recordkeeping requirements of small entities participating in the BSAI and GOA groundfish fisheries.

Reporting and Recordkeeping Requirements

This action will reduce, in a small way, the recordkeeping and reporting requirements of small entities participating in the BSAI and GOA groundfish fisheries.

Description of Alternatives Considered

A FRFA also requires a description of any significant alternatives to the preferred alternative that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the rule on small entities. The preferred alternative (the action alternative removing the requirement that vessel names be placed on marker buoys) places somewhat smaller obligations on directly regulated small entities than the

alternative of retaining the status quo. Thus, there are no alternatives that have a smaller adverse economic impact on directly regulated small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following website:

<http://alaskafisheries.noaa.gov>.

Collection-of-Information Requirements

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by Office of Management and Budget (OMB) under control number 0648-0353. Public reporting burden is estimated to average per response 10 minutes or less, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information

subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.24, revise paragraph (a)(1) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) * * *

(1) All hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under this part shall be marked with the vessel's Federal fisheries permit number or ADF&G vessel registration number.

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